

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AMADO RUBIO-GALLEGO,

Petitioner,

vs.

STATE OF NEVADA, et al.,

Respondents.

Case No. 3:09-CV-00451-RCJ-(VPC)

ORDER

The Court directed Petitioner to show cause why this action should not be dismissed as untimely. Order (#7). Petitioner has submitted a Motion to Show Cause (#8). After reviewing it, the Court concludes that this action is untimely and dismisses it.

Petitioner first argues that his state habeas corpus petition should toll the period of limitation pursuant to 28 U.S.C. § 2244(d)(2). The Court assumed as much in its previous Order (#7) and did not count the time spent between April 11, 2005, and July 25, 2006.

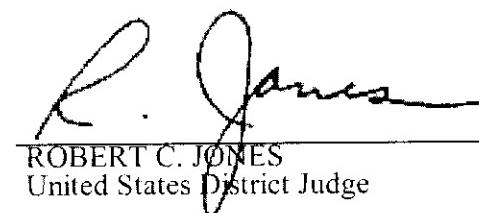
Petitioner also argues that his prior federal habeas corpus petition should toll the period of limitation pursuant to 28 U.S.C. § 2244(d)(2) because he is ignorant of Duncan v. Walker, 533 U.S. 167 (2001), which holds that federal habeas corpus petitions do not toll the period of limitation. Duncan was decided before Petitioner was convicted. Although pro se petitioners have some leeway in how they plead their cases, they are held to the same standard as everyone else in their constructive or actual knowledge of the law. The time that Petitioner spent on his prior federal habeas corpus petition, Case No. 2:07-CV-00262-KJD-(LR), is not tolled. Petitioner has failed to demonstrate that this action is timely.

1 Furthermore, even if the Court were to agree with Petitioner, this action still would be
 2 untimely. Petitioner's judgment of conviction became final on May 13, 2004. Three hundred thirty-
 3 three (333) days passed before Petitioner filed his state habeas corpus petition on April 11, 2005.
 4 The period of limitation was tolled until conclusion of that state-court action on July 25, 2006. Two
 5 hundred nineteen (219) days then passed before Petitioner filed his first federal habeas corpus
 6 petition on March 1, 2007.¹ If the Court accepts Petitioner's arguments, that action was pending
 7 until July 14, 2009, when the Court told him to stop filing documents long after the action had been
 8 closed. Thirty (30) days then passed before the Court received Petitioner's second federal habeas
 9 corpus petition. The total amount of non-ttolled time would be five hundred eighty-two (582) days.
 10 Even giving Petitioner every benefit of the doubt, this action still would be untimely.

11 IT IS THEREFORE ORDERED that Petitioner's Motion to Show Cause (#8) is
 12 **DENIED.**

13 IT IS FURTHER ORDERED that this action is **DISMISSED** with prejudice as
 14 untimely. The Clerk of the Court shall enter judgment accordingly.

15 Dated: *11-30-09*.



ROBERT C. JONES
United States District Judge

27 ¹The period of limitation would have expired on August 26, 2006, more than six months
 28 before Petitioner filed his first federal habeas corpus petition. Although timeliness was not the
 reason why the Court dismissed that action, it appears to have been untimely, too.